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Agenda item 3

Resolution adopted by the Human Rights Council on 29 September 2017

36/17. The question of the death penalty

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and all other relevant international human rights instruments, and reaffirming that all States must implement their obligations under international human rights law,

Recalling also the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty,

Recalling further General Assembly resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008, 65/206 of 21 December 2010, 67/176 of 20 December 2012, 69/186 of 18 December 2014 and 71/187 of 19 December 2016 on the question of a moratorium on the use of the death penalty,

Reaffirming the safeguards guaranteeing the protection of persons facing the death penalty set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, and the provisions regarding the implementation of the guidelines contained in Council resolutions 1989/64 of 24 May 1989 and 1996/15 of 23 July 1996,

Recalling all resolutions of the Commission on Human Rights on the question of the death penalty, the last of which was resolution 2005/59 of 20 April 2005,

Recalling also Human Rights Council decision 18/117 of 28 September 2011 on reporting by the Secretary-General on the question of the death penalty, Council resolution 22/11 of 21 March 2013 on a panel on the human rights of children of parents sentenced to the death penalty or executed, Council decision 22/117 of 21 March 2013 on a high-level panel discussion on the question of the death penalty and Council resolutions 26/2 of 26 June 2014 and 30/5 of 1 October 2015 on the question of the death penalty,

Taking note of the reports of the Secretary-General on the question of the death penalty, in the latest of which the Secretary-General examined the disproportionate impact of the use of the death penalty on poor or economically vulnerable individuals, foreign

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nationals, individuals exercising the rights to freedom of religion or belief and freedom of expression, and the discriminatory use of the death penalty against persons belonging to racial and ethnic minorities, its discriminatory use based on gender or sexual orientation, and its use against individuals with mental or intellectual disabilities,[1]

Mindful of the work of special procedure mandate holders who have addressed human rights issues related to the death penalty, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Working Group on the issue of discrimination against women in law and in practice,

Mindful also of the work undertaken by the treaty bodies to address human rights issues related to the death penalty,

Recalling general recommendation No. 35 on gender-based violence against women recently adopted by the Committee on the Elimination of Discrimination against Women, in which the Committee recommended that States parties to the Convention repeal all criminal provisions that affect women disproportionally, including those resulting in the discriminatory application of the death penalty to women,

Recalling also general recommendation No. 31 of the Committee on the Elimination of Racial Discrimination on the prevention of racial discrimination in the administration and functioning of the criminal justice system,

Recognizing the role of regional and subregional instruments and initiatives towards the abolition of the death penalty, which in some cases have led to the prohibition of the use of the death penalty,

Welcoming the fact that many States are applying a moratorium on the use of the death penalty,

Noting that States with different legal systems, traditions, cultures and religious backgrounds have abolished the death penalty or are applying a moratorium on its use,

Strongly deploring the fact that the use of the death penalty leads to violations of the human rights of the persons facing the death penalty and of other affected persons,

Acknowledging the report of the United Nations High Commissioner for Human Rights on the high-level panel discussion on the question of the death penalty,[2] during which it was concluded that a significant number of States hold that the death penalty is a form of torture or other cruel, inhuman or degrading treatment or punishment,

Deploring the fact that, frequently, poor and economically vulnerable persons and foreign nationals are disproportionately subjected to the death penalty, that laws carrying the death penalty are used against persons exercising their rights to freedom of expression, thought, conscience, religion or peaceful assembly and association, and that persons belonging to religious or ethnic minorities are disproportionately represented among those sentenced to the death penalty,

Condemning in particular the use of the death penalty against persons with mental or intellectual disabilities, persons below 18 years of age at the time of the commission of the crime, and pregnant women,

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[1] A/HRC/36/26.

[2] A/HRC/36/27.

Condemning the imposition of the death penalty as a sanction for specific forms of conduct, such as apostasy, blasphemy, adultery and consensual same-sex relations, and expressing serious concern that the application of the death penalty for adultery is disproportionately imposed on women,

Recalling that, particularly in capital cases, States are required to provide adequate assistance of counsel at every stage of proceedings, including during detention and arrest,

Emphasizing that access to consular assistance for foreign nationals, provided for in the Vienna Convention on Consular Relations, is an important aspect of the protection of those facing the death penalty abroad,

Emphasizing also that lack of transparency in the use of the death penalty has direct consequences for the human rights of the persons sentenced to death as well as for other affected persons,

Acknowledging the interest in studying the question of the death penalty, as well as in holding local, national, regional and international debates related thereto,

1. *Urges* all States to protect the rights of persons facing the death penalty and other affected persons by complying with their international obligations, including the rights to equality and non-discrimination;

2. *Calls upon* States that have not yet acceded to or ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty to consider doing so;

3. *Calls upon* States that have not yet abolished the death penalty to ensure that it is not applied on the basis of discriminatory laws or as a result of discriminatory or arbitrary application of the law;

4. *Calls upon* States to ensure that all accused persons, in particular poor and economically vulnerable persons, can exercise their rights related to equal access to justice, to ensure adequate, qualified and effective legal representation at every stage of civil and criminal proceedings in capital punishment cases through effective legal aid, and to ensure that those facing the death penalty can exercise their right to seek pardon or commutation of their death sentence;

5. *Urges* States that have not yet abolished the death penalty to ensure that the death penalty is not applied against persons with mental or intellectual disabilities and persons below 18 years of age at the time of the commission of the crime, as well as pregnant women;

6. *Also urges* States that have not yet abolished the death penalty to ensure that it is not imposed as a sanction for specific forms of conduct such as apostasy, blasphemy, adultery and consensual same-sex relations;

7. *Calls upon* States to comply with their obligations under article 36 of the Vienna Convention on Consular Relations, and to inform foreign nationals of their right to contact the relevant consular post;

8. *Also calls upon* States to undertake further studies to identify the underlying factors that contribute to the substantial racial and ethnic bias in the application of the death penalty, where they exist, with a view to developing effective strategies aimed at eliminating such discriminatory practices;

9. *Calls upon* States that have not yet abolished the death penalty to make available relevant information, disaggregated by gender, age, nationality and other applicable criteria, with regard to their use of the death penalty, inter alia, the charges, number of persons sentenced to death, the number of persons on death row, the number of

executions carried out and the number of death sentences reversed, commuted on appeal or in which amnesty or pardon has been granted, as well as information on any scheduled execution, which can contribute to possible informed and transparent national and international debates, including on the obligations of States with regard to the use of the death penalty;

10. *Requests* the Secretary-General to dedicate the 2019 supplement to his quinquennial report on capital punishment to the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of persons facing the death penalty and other affected persons, paying specific attention to the impact of the resumption of the use of the death penalty on human rights, and to present it to the Human Rights Council at its forty-second session;

11. *Decides* that the upcoming biennial high-level panel discussion to be held at the fortieth session of the Human Rights Council will address the human rights violations related to the use of the death penalty, in particular with respect to the rights to non-discrimination and equality;

12. *Requests* the Office of the United Nations High Commissioner for Human Rights to organize the high-level panel discussion and to liaise with States, relevant United Nations bodies, agencies, treaty bodies, special procedures and regional human rights mechanisms, as well as with parliamentarians, civil society, including non-governmental organizations, and national human rights institutions with a view to ensuring their participation in the panel discussion;

13. *Also requests* the Office of the High Commissioner to prepare a summary report on the panel discussion and to submit it to the Human Rights Council at its forty-second session;

14. *Decides* to continue its consideration of this issue in accordance with its programme of work.

40th meeting
29 September 2017

[Adopted by a recorded vote of 27 to 13, with 7 abstentions. The voting was as follows:

In favour:

Albania, Belgium, Bolivia (Plurinational State of), Brazil, Congo, Côte d'Ivoire, Croatia, Ecuador, El Salvador, Georgia, Germany, Ghana, Hungary, Kyrgyzstan, Latvia, Mongolia, Netherlands, Panama, Paraguay, Portugal, Rwanda, Slovenia, South Africa, Switzerland, Togo, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of)

Against:

Bangladesh, Botswana, Burundi, China, Egypt, Ethiopia, India, Iraq, Japan, Qatar, Saudi Arabia, United Arab Emirates, United States of America

Abstaining:

Cuba, Indonesia, Kenya, Nigeria, Philippines, Republic of Korea, Tunisia]